

all the evidence submitted, including any evidence from the same or a closely related matter which the Administrator has incorporated into the record and provided to the employer. The order shall remain in effect until the completion of the investigation and any subsequent hearing proceedings pursuant to § 655.625 of this part, unless the employer files and maintains on file with ETA an attestation pursuant to § 655.520 of this part or unless the prohibition is lifted by subsequent order of the Administrator because it is later determined that the employer's position was correct.

(7) The Administrator's cease and desist order shall be served on the employer or its designated representative by facsimile transmission, personal service, or by certified mail at the address specified in the employer's response or, if no such address was specified, at the employer's last known address.

§ 655.620 Civil money penalties and other remedies.

(a) The Administrator may assess a civil money penalty not to exceed \$5,000 for each alien crewmember with respect to whom there has been a violation of the attestation or subpart F or G of this part. The Administrator may also impose appropriate remedy(ies).

(b) In determining the amount of civil money penalty to be assessed, the Administrator shall consider the type of violation committed and other relevant factors. The factors which may be considered include, but are not limited to, the following:

- (1) Previous history of violation, or violations, by the employer under the Act and subpart F or G of this part;
- (2) The number of workers affected by the violation or violations;
- (3) The gravity of the violation or violations;
- (4) Efforts made by the violator in good faith to comply with the provisions of 8 U.S.C. 1288(c) and subparts F and G of this part;
- (5) The violator's explanation of the violation or violations;
- (6) The violator's commitment to future compliance; and/or
- (7) The extent to which the violator achieved a financial gain due to the

violation, or the potential financial loss, potential injury or adverse effect with respect to other parties.

(c) The civil money penalty, and any other remedy determined by the Administrator to be appropriate, are immediately due for payment or performance upon the assessment by the Administrator, or the decision by an administrative law judge where a hearing is requested, or the decision by the Secretary where review is granted. The employer shall remit the amount of the civil money penalty, by certified check or money order made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed to the Wage and Hour Division office for the area in which the violations occurred. The performance of any other remedy prescribed by the Administrator shall follow procedures established by the Administrator. The employer's failure to pay the civil money penalty, or to perform any other remedy prescribed by the Administrator, shall result in the rejection by ETA of any future attestation submitted by the employer, until such payment or performance is accomplished.

§ 655.625 Written notice, service and Federal Register publication of Administrator's determination.

(a) The Administrator's determination, issued pursuant to § 655.605 of this part, shall be served on the complainant, the employer, and other known interested parties by personal service or by certified mail at the parties' last known addresses. Where service by certified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail.

(b) Where the Administrator determines the prevailing practice regarding the use of alien crewmember(s) to perform longshore activity(ies) in a U.S. port (whether the Administrator's investigation involves an employer operating under an attestation, or under the automated vessel exception), the Administrator shall, simultaneously with issuance of the determination, publish in the FEDERAL REGISTER a notice of the determination. The notice shall identify the activity(ies), the U.S.